

ORIGINAL



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June 20, 2011

**BY HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

FILED/ACCEPTED

JUN 20 2011

Federal Communications Commission  
Office of the Secretary

Re: **Insight Communications, Inc.**  
**WCB Docket No. 05-25, RM-10593**  
**Data Request Response**

Dear Ms. Dortch:

Attached are an original and four copies of the redacted response of Insight Communications, Inc. ("Insight") to the Commission's data request in the above-referenced proceeding. As directed by the "Data Request in Special Access NPRM" Public Notice, DA 10-273 (rel. Oct. 28, 2010), and the *Second Protective Order*, DA 10-2419 (rel. Dec. 27, 2010), an original unredacted copy of this filing that includes information designated by Insight as highly confidential has been provided today to Marvin Sacks of the Pricing and Policy Division of the Wireline Competition Bureau.

Please contact me if you have any questions regarding this request or if you require additional information.

Sincerely,

J.G. Harrington

Counsel for Insight Communications, Inc.

cc: (w/attachments): Marvin Sacks

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June 20, 2011

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**BY HAND DELIVERY**  
**CONFIRMATION BY ELECTRONIC MAIL**

JUN 20 2011

Federal Communications Commission  
Office of the Secretary

Marvin Sacks  
Pricing Policy Division  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: **Insight Communications, Inc.**  
**WCB Docket No. 05-25, RM-10593**  
**Data Request Response**  
**Request for Confidentiality**

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Dear Mr. Sacks:

Pursuant to the procedures established by the Commission's *Special Access Data Request*, the *Second Protective Order* in the above-referenced docket, and Sections 0.459 and 0.457(d) of the Commission's rules, Insight Communications, Inc. ("Insight"), hereby requests that the Commission afford highly confidential treatment to the information Insight is providing at the Commission's request in response to Questions III. A, III.B.1-.2, and III.D.1-.2 of the *Special Access Data Request*.<sup>1</sup> Insight also requests that the Commission provide Insight and its counsel reasonable advance notice of and an opportunity to respond to any third-party request for disclosure of such information.<sup>2</sup>

Non-disclosure of the information provided in response to the questions identified above is consistent with Section 552(b)(4) of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), and Section 0.457(d) of the Commission's rules, 47 C.F.R. § 0.457(d), because Insight's responses consist of highly confidential commercial information that Insight does not

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<sup>1</sup> Data Requested in *Special Access NPRM, Public Notice*, 25 FCC Rcd 15146 (WCB 2010); *Special Access for Price Cap Local Exchange Carriers, Second Protective Order*, DA 10-2419 (WCB rel. Dec. 27, 2010) (the "*Second Protective Order*"); 47 C.F.R. §§ 0.459 and 0.457(d).

<sup>2</sup> Nearly all of the highly confidential information Insight is submitting falls within the categories of information identified in the *Second Protective Order* as qualifying for highly confidential treatment. See *Second Protective Order* ¶6. The *Second Protective Order* further notes that FOIA requests for such information will be entertained pursuant to 47 C.F.R. §§ 0.442 and 0.461. *Id.* ¶14. This letter therefore includes a showing that the information Insight is submitting should be exempt from disclosure requests pursuant to FOIA.

disclose to the public. Further disclosure of this information would cause Insight substantial competitive injury.

Under exemption 4 of FOIA, the Commission need not disclose, among other things, any confidential commercial or financial information.<sup>3</sup> “Commercial or financial matter is ‘confidential’ . . . if disclosure of the information is likely . . . to cause substantial harm to the competitive position of the person from whom the information was obtained.”<sup>4</sup> Both the Commission and the courts have acknowledged that commercial and financial information can include business sales statistics, research data, technical designs, overhead and operating costs, and information regarding an entity’s financial condition.<sup>5</sup> Moreover, “financial or commercial information provided to the Government on a voluntary basis is ‘confidential’ under Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.”<sup>6</sup>

Under these standards, the designated information provided by Insight in response to the data request is proprietary, non-public information that would likely cause Insight substantial competitive harm if it were publicly disclosed. This information therefore constitutes “confidential commercial or financial information” within the meaning of FOIA exemption 4 and should be protected from public disclosure. This information includes without limitation: (a) the locations of any connections that it owns or leases from another entity under an indefeasible right of use agreement (Question III.A); (b) the precise location and capacity of lines over which Insight may provide to users a dedicated communications path to its network (Question III.B.1); (c) the locations where Insight has collocated facilities in certain LEC wire centers (Question III.B.2); and (d) the business rules governing Insight’s decision to construct new facilities (Question III.D.1-2).

Insight’s general company policy prohibits release of this sensitive information to the public. In fact, Insight takes extraordinary measures to prevent the disclosure of system-specific information precisely because competitors may use such information to, among other things, discern those areas that Insight is most and least able to serve as well as Insight’s ability to expand in the future. Insight limits the internal circulation of such information to only those employees with a need to know and has an established, strictly enforced policy to limit the public disclosure of system-specific technical information.

Moreover, disclosure of the disaggregated, system-specific technical information reported in Insight’s response to Questions III.A, III.B.1-2, and III.D.1-2 of the Bureau’s data request certainly would result in substantial competitive harm to Insight. The Commission has previously concluded that the public disclosure of disaggregated commercial data entails a “likelihood of substantial competitive harm.” *Letter from Kathleen M.H. Wallman to John L.*

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<sup>3</sup> 5 U.S.C. § 552(b)(4).

<sup>4</sup> *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); see also, e.g., *Arvig Telephone Co.*, 3 FCC Rcd 3723, 3723-24 (Com. Car. Bur. 1988) (applying *National Parks*).

<sup>5</sup> See Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 at para. 3 (1998) (citing *Landfair v. U.S. Dep’t of Army*, 645 F. Supp. 325, 327 (D.D.C. 1986)).

<sup>6</sup> *Id.* at para. 4 (citing *Lykes Bros. S.S. Co. v. Peña*, 1993 U.S. Dist. LEXIS 20279, No. 92-2780, slip op. at 9 (D.D.C. 1993) and Department of Justice FOIA Update, Spring 1993, at 5).

*McGrew*, 10 FCC Rcd 10574, 10575 (Com. Car. Bur. 1995). “Because the data is disaggregated, it has the potential of revealing [the Company’s] market plans and positions . . . . Such information could be used by competitors to devise strategies to introduce new services to the competitor’s benefit, or exploit weaknesses in the existing [Company] operation.” *Id.* These concerns are fully applicable to the disaggregated and confidential data reported in the attached response.

The Bureau already has recognized that the data for which Insight seeks protection is entitled to highly confidential treatment. Nearly all of the information for which Insight seeks highly confidential treatment falls squarely within the categories of highly confidential material set forth in the *Second Protective Order*. Specifically, Insight’s response to Question III.B.1 contains “highly detailed or granular customer or geographic information regarding . . . the location that [Insight] serve[s] with last mile facilities and the nature of those facilities;”<sup>7</sup> Insight’s response to Question III.B.2 contains “highly detailed or granular customer or geographic information regarding . . . the location of [Insight’s] collocations;”<sup>8</sup> and Insight’s response to Questions III.D.1-.2 includes “[t]he business rules and other factors [Insight] takes into consideration when deciding whether to self-deploy channel termination and local transport facilities or lease such facilities from a third party.”<sup>9</sup> The *Second Protective Order* recognizes each of these categories of information as highly confidential, and the Commission should withhold such information consistent with that determination.

For the foregoing reasons, Insight respectfully requests that the Commission afford highly confidential treatment to the information provided in Insight’s response to Questions III.A, III.B.1-.2, and III.D.1-.2 of the Bureau’s data request and that the Commission provide Insight and its counsel with reasonable advance notice and an opportunity to respond to any request from any third party for disclosure of such information.

Please contact me if you have any questions regarding this request or if you require additional information.

Sincerely,



J.G. Harrington

Counsel for Insight Communications, Inc.

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<sup>7</sup> *Second Protective Order* at para. 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

### III. Voluntary Information Request

- A. For each Listed Statistical Area, we request that all providers other than incumbent LECs (*e.g.*, competitive LECs, out-of-region incumbent LECs, cable companies, fixed wireless, etc.) state whether their company has any connections that it owns or that it leases from any other entity under an indefeasible right of use (IRU) agreement.

**Insight Response: Insight has** [REDACTED]

- B. We request that all providers other than incumbent LECs (*e.g.*, competitive LECs, out-of-region incumbent LECs, cable companies, fixed wireless, etc.) submit data to respond to the following questions:
1. For each location in each Listed Statistical Area to which your company provides a connection that you own or that you lease from another entity under an indefeasible right of use (IRU) agreement, provide the following information below. Please use the template available at <http://www.fcc.gov/wcb/ppd/template.xls> for your response, using the data elements identified in Table III.B.1 of Attachment A, and consistent with that table's instructions.
    - a) The associated name of the carrier that actually owns the connections (if leased from another entity subject to an IRU);
    - b) The number of years left in the IRU lease (if applicable);
    - c) The actual situs address for the location (*i.e.*, land where the building or cell site is located);
    - d) The geocode for the location (*i.e.*, latitude and longitude);
    - e) The Common Language Location Identifier code ("CLLI") of the incumbent LEC wire center that serves the location;
    - f) Whether the location is a building, other free-standing site, cell site in or on a building, or free-standing cell site;
    - g) Type of medium used to provision the connection to the location (*e.g.*, fiber, copper, hybrid fiber coax, fixed wireless/satellite);
    - h) If the medium is fiber, the number of strands of lit fiber;

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- i) If the medium is fiber, the number of strands of unlit fiber;
- j) Total capacity<sup>10</sup> (upstream and downstream) of the connection as sold;
- k) Maximum total capacity (upstream and downstream) of the connection with current hardware and line cards.

**Insight Response:** Insight's responses to these requests are included on the attached compact disc.

- 2. For each incumbent LEC wire center where your company is collocated in each Listed Statistical Area, provide the actual situs address, the geocode, and the CLLI code for the incumbent LEC wire center. Please use the template available at <http://www.fcc.gov/wcb/ppd/template.xls> for your response, following the instructions and using the data elements identified in Table III.B.2 of Attachment A.

**Insight Response:** Insight's responses to these requests are included on the attached compact disc.

- 3. For each Listed Statistical Area in which your company owns fiber or your company leases fiber from another entity under an IRU agreement, provide a map of the routes followed by fiber that constitute your network. Also, provide a map of the routes followed by fiber connecting your network to end-user locations. Please follow the instructions and use the data elements identified in Tables III.B.3(i) and III.B.3(ii) of Attachment A for your response.

**Insight Response:** Insight does not maintain maps illustrating the data requested in this subsection.

- C. We request that all CMRS providers, for each cell site in each Listed Statistical Area, provide the information below. Please use the template available at <http://www.fcc.gov/wcb/ppd/template.xls> for your response, using the data elements identified in Table III.C. of Attachment A, and consistent with that table's instructions.

- 1. The actual situs address for the cell site (*i.e.*, land where the cell site is located) if the cell site is located in or on a building;

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2. The geocode for the cell site (*i.e.*, latitude and longitude);
3. The CLLI code of the incumbent LEC wire center that serves the location;
4. Whether the location is a cell site in or on a building, or a free-standing cell site;
5. The name of the carrier that provides your connection to the cell site.

**Insight Response: Insight is not a CMRS provider, so section III.C. is not applicable**

D. We request that all providers other than incumbent LECs (e.g., competitive LECs, out-of-region incumbent LECs, cable companies, fixed wireless, etc.) answer the following questions pursuant to the Instructions in Section II of this Public Notice:

1. Explain the business rule that you use to determine whether to build a channel termination to a particular location. Please enumerate all underlying assumptions.

**Insight Response: Insight** [REDACTED]

2. Please describe reasons why even if your business rule suggests that it would make sense to build, you would not, e.g., inability to access building, issues with rights of way, inability to obtain capital, issues of timing.

**Insight Response: Insight** [REDACTED]

E. We request that all incumbent LECs answer the questions below. In your response, please use the template available at <http://www.fcc.gov/wcb/ppd/template.xls>, following the instructions and using the data elements identified in Table III.E of Attachment B.

1. For each wire center in each Listed Statistical Area, please provide the number of connections that you own or that you lease from another entity under an IRU agreement:

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- a) In total;
  - b) By the type of medium used to provision the connection to the location (e.g., fiber, copper, hybrid fiber coax, fixed wireless/satellite);
  - c) For each medium listed above, by the maximum total capacity (upstream plus downstream) of these connections with the current hardware and line cards;
  - d) For each medium listed in III.E.1.b by the total capacity sold (upstream plus downstream) of these connections with the current hardware and linecards.
- 2. For each wire center in each Listed Statistical Area, for the fiber connections that you own or that you lease from another entity under an IRU agreement, please provide the number of lit and unlit fibers.
  - 3. For each wire center in each Listed Statistical Area, provide the number of locations to which you have connections that you own or that you lease from another entity under an IRU agreement by type of location (e.g., building, other free-standing site, cell site in or on building, or free-standing cell site).

**Insight Response:** Insight is not an incumbent LEC, so section III.E. is not applicable.

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A COMPACT DISC  
CONTAINING INSIGHT'S  
RESPONSES TO REQUESTS  
III.B., C, AND E CONSISTS  
OF HIGHLY CONFIDENTIAL  
INFORMATION AND IS  
REDACTED IN ITS  
ENTIRETY

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